



# Procter & Gamble

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FEDERAL EXPRESS

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Region V  
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Chicago, IL 60604

**FOR SETTLEMENT PURPOSES ONLY**  
**PROTECTED FROM DISCLOSURE UNDER F.R.E. 408**

Re: Skinner Landfill

Dear Ms. Estes:

Enclosed please find a revision to our earlier submittal to U.S. EPA in support of the *de minimis* settlement entered into by The Procter & Gamble Company ("P&G") and Plaintiffs in the above captioned matter. As a result of phone calls between your office, Vince Stamp (our outside counsel at Dinsmore & Shohl) and me, and specifically at your request, I have reduced the number of redactions in the enclosed document to provide a more complete presentation of the rationale Mr. Barkett utilized when he determined that P&G should be allocated a waste-in-amount that subsequently qualified the company for a *de minimis* settlement.

Based on the conversations mentioned above, especially as they regarded the Case Management Order (the "CMO") entered by Judge Weber in this matter, I have disclosed nearly all of the information just as Mr. Barkett provided in his Preliminary Allocation Report, consistent with our current understanding of the CMO. However, I have still found it necessary to redact portions of the enclosed document to comply with the terms of the CMO. In order for the Agency to have a full picture of Mr. Barkett's report despite the remaining redactions, I have provided a brief explanation for each of the redactions, most of which are simply haulers' names. Except as noted in the following paragraph, no redactions have been made to material included in Mr. Barkett's allocation that leads to any disposal activities by P&G at the Skinner Landfill. In order that my explanations are easier to relate to the enclosed allocation document, I have numbered the pages in the lower right corner of each page.

All redactions on page 1 have been made so as to comply with the CMO. Several waste hauling companies are mentioned (along with the name of one employee), and according to the terms of the CMO, these names are redacted. Liability for waste that was collected by one of the haulers (whose name has been redacted), and disposed of at Skinner, has been assigned to P&G by the allocator.

On page 3, in the first full paragraph, two haulers' names have been redacted as well the landfills they used. Neither of the landfills was the Skinner landfill. These names have been redacted pursuant to the CMO. In addition, one hauler's name has been redacted from the third complete paragraph. Redaction of this name has also been made to comply with the CMO.

*Procter&Gamble*

Sherry Estes, Esq.  
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On page 4, all of the redactions reflect only haulers' names. The information regarding each hauler remains in the document. These redactions have been made so as to comply with the terms of the CMO.

On page 5, the same type of redactions have been made to the paragraphs under "Miami Valley Labs" and "General Offices - Downtown." Only haulers' names have been redacted. On pages 5 and 6, most of the material under "Haulers and Landfills Believed to be Used by P&G in the late 1950s-1990s" has been redacted. This section makes repeated references to P&G's disposal activities at locations other than the Skinner Landfill, and to many haulers not even associated with this matter. All of this information was provided to the allocator in a good-faith attempt to show who hauled P&G's waste, and to what specific landfills. As this material was provided in the ADR context, and is not relevant to the allocation at Skinner (other than to show other landfills that P&G did use), the substantive material has been redacted, as per the CMO.

In the section titled "Other P&G facilities Located Within 75 Miles of Site" beginning on page 6, P&G provided information regarding its various sites within seventy-five (75) miles of Skinner, even though none of the material disposed was hauled to Skinner. Redactions have been made to the names of the haulers, and to one landfill other than Skinner that P&G believes received some waste. All redactions are mandated by the CMO.

Under the "Miscellaneous Transporters" category beginning on page 7, redactions have been made to the names of several haulers, pursuant to the CMO.

On page 8, Mr. Barkett discussed certain alleged leases that P&G may have had in the late 1940s. Only the name of the facility has been redacted to be in compliance with the CMO.

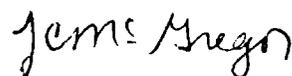
Under the section titled "Site Witnesses," the same hauler employee's name that was redacted on page 1 is again redacted. However, Mr. Ludwig's name has not been redacted as his testimony is integrally related to the information about Chem-Dyne. In the remainder of that section, only the names of hauling or wrecking companies have been redacted for compliance with the CMO.

The final redaction was made to the last partial paragraph on page 9. The name redacted is again the same employee's name from page 1.

Accordingly, the material that remains redacted remains so only because of the provisions of the CMO. No material has been redacted that offers any basis that P&G's alleged liability at the Skinner Landfill should be increased beyond that allocated by Mr. Barkett.

After you have had the opportunity to review this submittal, please do not hesitate to call Vince Stamp (513-977-8264) or me if there are any remaining issues you need addressed in regard to Mr. Barkett's allocation to P&G.

Sincerely yours,



Jane C. McGregor

## Procter & Gamble

Settlement Amount: \$44,991.66

### Excerpt from Allocator's Preliminary Report :

P&G filed a response relating to a number of facilities.

**Advertising Services Building.** P&G reports that this facility was a warehouse for storage of P&G advertising and promotional materials during the Skinner Landfill time period. No manufacturing was conducted at this site. Roughly 200 people worked at this facility in 1966-1969.

Cafeteria waste was picked up by [REDACTED] from [REDACTED] at this location. According to [REDACTED] testimony, the trash was deposited at the Skinner Landfill beginning in 1962 or 1963 and continued until about 1968. P&G's response stated that it is unable to confirm or refute [REDACTED] testimony.

P&G said that this facility produced solid waste with no chemical constituents, and paper goods such as coupons, office trash and cafeteria waste. [REDACTED] said that he recalled going to the P&G Advertising Building on average two times per week and collecting from four 30 gallon garbage cans.

P&G further stated that in the 1978-90 time period, [REDACTED] collected waste from this facility.

**Technical Centers.** Chem-Dyne collected waste from four P&G Technical Centers in the Cincinnati area. There would be one monthly pick-up for all four P&G Technical Centers. Chem-Dyne was to transport the waste to Robert Ross & Sons, Inc. in Grafton, Ohio for incineration. The actual quantities picked up each month were not noted although some invoices indicated "T/L" which, I assume, is truckload. There was a standard monthly charge of \$900 during the 1975-76 period. In its questionnaire response, P&G stated that documents associated with the Chem-Dyne matter showed disposal costs in the 1975-76 time frame of \$9,000 per "load." However, the documents indicate the correct number is \$900. The company says the pick-ups appear to be monthly.

P&G is in possession of transaction documents dating from 1975 - 1976 which detail interactions between Chem-Dyne and Robert Ross & Sons, Inc. regarding the transactions where P&G laboratory waste was sent by Chem-Dyne to Ross for incineration in Grafton, Ohio. The quantity of waste attributed to P&G and sent by Chem Dyne to Ross was 871 drums.

**Ivorydale Complex.** The Ivorydale Technical Center (ITC) was a laboratory and research facility for consumer products. It was accompanied at this location by three manufacturing plants. The Food Plant produced edible vegetable shortening and oils and formerly produced dry cake mix. The Soap Plant produced bar soap, liquid and powder detergents and industrial cleaning products. The St. Bernard Plant produced synthetic detergent products and formerly produced perfume.

P&G explained that generally finished products would only be disposed if they were off-specifications which meant that the formulation and/or the packaging was incorrect. P&G gave examples in its response (erroneously combining the wrong proportion of ingredients, combining products to the wrong consistency, i.e., too much or too little liquid or ingredient, packaging that did not include all of the copy that should be on the label, misspellings in a label, containers that were not filled to the proper level).

P&G explained that soap, fatty acid and fabric softener in drum quantity may have been generated from the Product Development area of the ITC. Based on nexus package information, P&G said that finished bar soap in dumpsters may have been generated by the Complex and taken to the Skinner Site in 55-gallon drums sometime in the 1940s and 1950s. P&G added that sometime in the late 1960s to mid-1970s, soap and fatty acid were allegedly seen in the dumpster at the Site.

P&G explained that waste soap was a solid consisting of tallow, paraffin, glycerine and perfumes. The finished product was manufactured by neutralizing a fatty acid to produce an organic soap. Several types of soap were manufactured during the relevant period. Production rates varied throughout time based on consumer usage. P&G had no information regarding the quantity of off-specification soap produced.

One particular soap manufactured in the 1940s and 1950s (and still manufactured today) is the Zest Deodorant Beauty Bar. Currently Zest is made of sodium tallowate, sodium cognate, sodium cocoglyceryl ether sulfonate, magnesium tallowate, water, sodium sulfate, magnesium cognate, sodium chloride, lauric acid or potassium, lauryl sulfate, fragrance, triclocarbon, sodium silicate, titanium dioxide, chromium, and hydroxide green. It may also contain tetrasodium EDTA, potassium sulfate and/or potassium chloride. Zest is not "hazardous" within the meaning of the OSHA Hazard Communication Standard, P&G stated. It is moderately soluble in water.

Ivory Bar Soap is a soap from animal and vegetable fats to which a fragrance is added. P&G reports that it is not "hazardous" within the meaning of the OSHA Hazard Communication Standard. Ivory Soap was manufactured in the 1940s and 1950s and is still manufactured. P&G noted that soap containers were and are typically made of cardboard.

P&G further explained that fatty acid is an intermediate of soap. Fatty acid is a solid at ambient temperature. It is derived from animal or vegetable sources and is generated from the hydrolysis of fat. Fatty acid production related to the production needs for soap. P&G had no information regarding the monthly or annual amount of off-specification fatty acid generated.

Fabric softener is a liquid, composed of cationic fabric softening agents, perfume, bluing and quality control agents. It is a finished product. Off-specification fabric softener would not be a consistent waste stream. P&G had no information regarding the amounts of off-specification fabric softener generated

Downy Fabric Softener was allegedly seen at the Site. P&G noted, according to nexus package information. Downy Fabric Softener currently is a liquid fabric softener that contains cationic fabric softening agents, perfume, bluing, and quality control agents. P&G said that it is not "hazardous" within the meaning of the OSHA Hazard Communication Standard. It is completely soluble in water.

Crisco oil is an edible, vegetable oil that is a finished product resulting from refining

vegetable oil. Off-specification Crisco would not be a consistent waste stream, P&G said, but it has no information regarding the generation or disposal of off-specification Crisco oil in the 1950s and 1960s.

P&G had records that [REDACTED] transported soap, Crisco, pre-mix and light duty liquid in 1985 - 1986. The [REDACTED] was usually noted as the destination. [REDACTED] invoices for Crisco were also located. They were sporadic but dated from 1974-1979. No destination was noted on the invoices, but personnel believe [REDACTED] used [REDACTED] Fairfield, Ohio landfill. (Other haulers noted in the summary below may have been used.)

Cinch, a household spray cleaner, is a liquid reportedly seen in a railroad car at the Site in the 1950s - 1960s. A formulation card for Cinch has been located from the late 1960s when the product was briefly marketed. It was a surface cleaner with the following composition: Butyl "Cellosolve" Solvent (polyethylene glycol), Butyl "Carbitol" Solvent (diethylene glycol n-butyl ether), TSP (trisodium phosphate), sodium LAS (Cationic SO<sub>3</sub>), Perfume, Phosphoric Acid, Water, Color Solution: Drimarine blue, D&C Yellow #10, Phenyl Mercuric Acetate, and water. It was a finished household cleaning product that came in plastic containers. Cinch was test marketed late in 1966 and then marketed nationally in 1967 for a few years. It was generated at the complex. If Cinch was disposed, it was probably by one of the haulers discussed generally below.

AGS (Alkyl Glyceryl Sulfonate, Sodium) paste is a semi-solid soap and laundry detergent. It is an intermediate product used at the Soap Plant in the manufacture of soap and laundry detergent. AGS paste was hauled by [REDACTED] in the early 1970s and is discussed in the [REDACTED] section. P&G had no information regarding the monthly or annual amount of waste generated or that may have been taken to the Site by [REDACTED]

P&G also discussed Comet, a household cleaner. It is a powder made up of 80-90% silica sand, sodium dichloro-s-triazinetrione dihydrate, sodium sulfate, sodium carbonate, sodium alkyl benze sulfonate, colorant and perfume. The finished products are generated from blending the ingredients noted above. Off-specification Comet would not be a consistent waste stream. P&G had no information regarding the monthly amount of off-spec Comet generated. Transporters discussed below generally may have hauled off-spec products.

Prell is a shampoo composed of surfactants, water, fragrance and dye. It is a finished product. Off-specification Prell would not be a consistent waste stream. According to information in the nexus documents, Prell was seen on several skids during the mid-1970s time frame. P&G has no information regarding the amount off-specification shampoo generated. Transporters listed generally may have hauled off-spec products.

P&G noted the administrative deposition testimony of Roger Ludwig who recalled being told that he was handling at the Site laboratory wastes from P&G. Mr. Ludwig was referring to a shipment of 50 paper barrels transported from Chem-Dyne to Skinner in the mid 1970s. P&G said that laboratory waste may have been generated by its technical centers (including the ones discussed below) but P&G had no information regarding the constituents included under the definition of "lab waste" by Mr. Ludwig. P&G personnel

described lab waste as potentially consisting of any discarded commercially available chemical. Additionally, glassware, plastic pipettes and associated paper waste would be considered lab waste. Due to the very nature of research, lab waste varies in quantity and composition, depending on what research is being conducted. P&G added.

Sharon Woods Technical Center. This facility housed administrative personnel and research and development personnel for health and beauty care products. It operated from 1970-1990. The following materials were manufactured there: bar soap, liquid soap, and some heavy duty cleaners. Industrial chemical and intermediates were researched and developed at the facility including fatty acids, alcohols, and natural glycerin. Laboratory waste was produced as a result of the use of generally available commercial laboratory chemicals. The waste was varied, P&G reports, and the nature of research and development results in small quantities of a variety of types of commercially available chemicals being generated for disposal.

██████████ was used to dispose of Sharon Woods' waste, including construction debris waste in the years 1986-1990. An employee from Sharon Woods recalled following ██████████ to a landfill in ██████████ to witness a disposal. This was not an uncommon practice as P&G attempted, P&G said, to ensure that its wastes actually were transported to, and disposed of at, the facility used by the waste hauler. P&G did not where ██████████ disposed of construction debris waste.

In 1989, the ██████████ fee for "Hauling and Landfill Charges" was \$205 per pickup. Employees believed the service was for routine office renovation at the Sharon Woods Technical Center. P&G explained that when office space was rearranged at the Sharon Woods Technical Center waste was produced in the form of dry wall, metal studs, concrete block, electrical conduit and steel piping, ceiling tile and carpets, metal doors and frames. P&G personnel stated that there was a sign at the B Dock by the dumpster reading "Non-hazardous materials only." P&G personnel who brought material to these areas for disposal received training at safety meetings on how to comply with environmental laws, specially focusing on proper disposal methods and other relevant topics.

Winton Hill Technical Center was open from 1959 - 1990. It housed offices and research and development facilities where employees focused on research for consumer products including paper, food and beverage, and soap. It produced the same type of laboratory waste described above.

Winton Hill used ██████████ to transport construction debris from office space renovation. ██████████ was used to haul solid waste, office trash and cafeteria waste from 1975-1978. P&G reported that it did not appear that ██████████ provided service every month in the 1975-1978 time frame.

██████████ was used once in 1984 and 1988 and more often in 1985-86. P&G is in possession of the following invoices: one for \$540 in 1984; one for \$159 in 1988; and invoices for 1985 and 1986. Personnel stated that these invoices were for the rental of a compactor and associated hauling charges (\$90 per trip). The waste was from a Paper Products building apparently, and consisted of paper. In the Paper Products building, large

rolls (4 ft. x 2 ft. x 4 ft.) of paper are converted to smaller rolls resulting in paper towels, tissues, and other paper products which are then used as test products. The scrap paper from this process would be put in the compactor. The other invoices for Winton Hill listed Building 501 as the service location with \$45 for hauling and dumping charges and a monthly rental fee of \$90 for open top containers. The invoices are limited to a three month period in 1986. P&G personnel stated that there was not, and is not, a Building 501 so P&G is unable to identify where this pickup was actually made.

**Miami Valley Labs.** Miami Valley Labs was operated by P&G from 1952 through 1990. It housed researchers conducting consumer product research on food and beverage products, laundry products, paper products, and health care products. Laboratory waste, as described above, was also produced. Pick-ups from [REDACTED] were thought to be for solid waste, i.e. office trash and cafeteria waste. P&G is in possession of invoices reflecting P&G's use of [REDACTED] one time for \$5.00 in 1979; two times for \$14.00 in 1978; and a more consistent usage in 1985-1987. The unit price charged by [REDACTED] was between \$30.00 and \$52.50 and the total per month was about \$200 - \$400.

**General Offices - Downtown.** During the relevant time period, P&G had downtown offices that housed administrative personnel. No manufacturing was conducted at the downtown facilities. There were no allegations that material from the downtown offices reached the Site. [REDACTED] transported some wastes from the downtown location, but P&G had no description of the waste transported. P&G also had no information regarding the total monthly amount of waste produced. P&G possessed invoices for [REDACTED] services from June 1978 - 1981 and one for November 20, 1987. Most invoices state that [REDACTED] performed pickups on Monday, Tuesday, Wednesday, Thursday, and Friday. Some only reflect four-day per week pickups. It appears the service charge was for a 6 cy container with costs varying from \$140 to roughly \$540. P&G personnel thought these invoices reflected pickups for office trash and perhaps routine renovation debris. The monthly charges were roughly \$800, but it does not appear that [REDACTED] services were used each month.

**Haulers and Landfills Believed to be Used by P&G in the late 1950s - 1990s.** P&G summarized the haulers or landfills used by P&G in the 1950s - 1990 time period.

[REDACTED]

[REDACTED] ii. Transporters used to haul the general industrial trash were [REDACTED]

Other P&G waste -- [REDACTED] was taken to [REDACTED]

- a. [REDACTED]
- b. [REDACTED]
- c. [REDACTED]
- d. [REDACTED]
- e. [REDACTED]
- f. [REDACTED]
- g. [REDACTED]
- h. [REDACTED]

The Transporters used to haul this waste were:

- a. [REDACTED]
- b. [REDACTED]
- c. [REDACTED]
- d. [REDACTED]
- e. [REDACTED]
- f. [REDACTED]
- g. [REDACTED]
- h. [REDACTED]
- i. [REDACTED]
- j. [REDACTED]
- k. [REDACTED]
- l. [REDACTED]
- m. [REDACTED]

[REDACTED] would [REDACTED] information was [REDACTED] and was a manager [REDACTED]

**Other P&G facilities Located Within 75 Miles of Site.** While no connection to the Site was found, P&G discussed the following facilities that are located within 75 miles of the Site:

1. Lunken Airport Hangar #4, Airplane Operations Dept. No manufacturing was done at this facility. Trash and possibly construction debris were generated. Office waste was generated by airport personnel. P&G operated the department from 1954 to beyond 1990. It

was owned by the [REDACTED] and rented by P&G. [REDACTED] was paid \$45 per pick-up for twelve pick-ups in 1977 and \$100/pick-up in end of 1978-1979. [REDACTED] invoices from 1975-1979 reflect charges of \$60/month.

[REDACTED] hauled waste in containers. The invoices in P&G's possession for Lunken Airport are from 1977-1979. The majority of the invoices noted Monday-Wednesday-Friday pickup. The monthly charge appeared to be \$45 in 1977 and \$100 per month in 1978. Personnel at the airport recalled that [REDACTED] hauled routine office trash.

2. The Laidlaw Avenue Facility was discussed above.

3. Este Process Technical Center housed research personnel who assisted with manufacturing process problems. Invoices from [REDACTED] showed that [REDACTED] was paid for one pickup in 1983, two pickups in 1985, eight pickups in 1986, and one pickup in 1990. The total charged was \$1,750.25. P&G believed that [REDACTED] took the waste to the [REDACTED] Landfill.

4. Global Process Development Facility. P&G did not discuss this facility except to say there was no evidence linking it to the Site.

5. P&G Greenhouse had a small farm, a farm house and a greenhouse. Agricultural research was conducted at these facilities and products were not manufactured at these facilities. P&G owned this facility from 1969 until 1980, when it was purchased by a developer. P&G is in possession of eight [REDACTED] invoices from March - September 1975. These invoices did not note the material transported. The total fee charged in each invoice is \$145.

6. Redna Productions was leased by P&G. It was a pilot commercial advertising production studio. No manufacturing was conducted on site. The only waste stream produced was routine office trash.

**Miscellaneous Transporters.** P&G located nine invoices for [REDACTED] from 1987-1990 for residential houses. Each invoice shows a total hauling and disposing charge ranging from \$130 - \$175.

P&G also located eight invoices for [REDACTED]. One showed a credit to the General Offices for a 6" channel for \$253 on June 28, 1985; two appeared to be for the Advertising Services Bldg. for purchase of paper for \$171.15 and \$122.10 in October 1981; and five were for angle iron and rebar totaling \$283.92 between May - August 1988. These invoices do not appear to involve waste hauling, P&G wrote.

P&G also located two invoices [REDACTED] that showed that the Winton Hill Technical Center purchased three Thompson Electric pumps; one in April 1985 and two in January 1985.

P&G also located nine invoices for [REDACTED]. Seven appear to be for the purchase of sodium metasilicate in August 1981, for \$2,099.48; one for purchase of sulfuric acid in November 1981 for \$195; and one for purchase of ethylene glycol in November 1987 for

\$318.00.

P&G has not found records which would allow the company to provide exact production volumes or amounts for the products allegedly seen at the Site. This holds true with respect to off-specification products. P&G was not able to provide in its questionnaire response a good-faith estimates for either production amounts or off-specification materials.

P&G explained that production at P&G is typically controlled by consumer demand. This demand has varied as competition has entered into or departed from the marketplace. This demand has varied as consumers' buying habits and product preferences have changed. P&G cannot estimate production for the period of years relevant to the Skinner Landfill matter because its production has varied over the years to meet these differing demands for its products in the marketplace.

P&G believed that as much variance occurs for off-specification product as occurs for material production itself. Initially, off-specification production is, by definition, a mistake. There is no way to ascertain the number of mistakes made, P&G said. Also, because of the costs of raw materials, and the investment P&G makes in its manufacturing processes, P&G attempts to utilize all materials. When off-specification material is identified, it is typically remixed, either to form the original intended product, or possibly in an industrial version of the original product. As this remixed product is not always possible, it is impossible for P&G to estimate off-specification material for the relevant time frame.

While P&G acknowledged that there are many invoices without units or quantities from companies which hauled its wastes during the relevant time period, P&G believed that these invoices provided some semblance of an estimate of the quantity of material which was disposed during the relevant period of time. The invoices from Chem-Dyne provided by the Department of Justice, give an approximation of P&G's wastes for the 1975-76 time frame hauled by Chem-Dyne. Invoices from other haulers likewise provide an approximation of the waste hauled from P&G during the relevant time period, P&G argued.

**Leases.** Regarding P&G's alleged lease of three building in the late 1940s at the [REDACTED] facility, P&G had no leases or other records indicating a connection to the [REDACTED] facility. Three retirees from the Real Estate Department whose work spanned the 1950s - 1990s have been interviewed, but none had any recollection of renting space at the [REDACTED] facility.

**Site Witnesses.** [REDACTED] testimony was discussed above. I deal with Roger Ludwig's testimony separately below when I discuss Chem-Dyne.

Maria Roy recalled the disposal of Cinch, the household cleaner, which she linked to Procter & Gamble. She said that there were railroad cars filled with Cinch at the Site but that she did not know if any Cinch was disposed of in the Landfill. She also suggested that her father did work for P&G that resulted in the disposal of construction debris based on hearing conversations between her mother and father in the late 1950s or 1960s, as I read her testimony. M. Roy Depo., p. 291 - 294.

Elsa Skinner testified that Procter & Gamble used the Site for the disposal of "contaminated lard and whatever they manufacture." She appeared to be saying that the waste was hauled in by someone else but paid for by P&G. It was a customer for only a short time, and she did not know the number of times waste came in or when P&G used the Site. E. Skinner Depo., p. 440-441.

Lloyd Gregory described the disposal of one or two loads of soap and Comet cleaner in barrels. He said it came in a 20-30 cy dumpster. This occurred in the late 1980s. L. Gregory Depo., p. 166-67. David Jividen recalled the disposal of sample boxes of Tide and soap boxes in a one time event consisting of about 40 cys. D. Jividen Depo., p. 72-75.

Rodney Miller was not sure if P&G used the Site, but said that if there was a link, it would be through [REDACTED]. Mr. Miller recalled that John Skinner moved heavy machinery for P&G, apparently through [REDACTED]. R. Miller Depo., p. 55. 180-181.

Ray Skinner said that P&G hauled in shampoos, dishwashing detergent, Downy fabric softener in drums, soaps, and powders. He said that P&G used a van truck to dispose of waste. It had a capacity of 40-50 cys, he said. He saw the name Procter & Gamble on the side of the truck. He was confident that P&G was the source of 300-400 loads over the years. He personally saw 20-30 loads, he said. He placed P&G's use of the Site as covering a period that spanned the 1950s until John Skinner died in 1982. R. Skinner Depo., p. 243-49, 1188, 1253.

He also said that [REDACTED] hauled demolition waste for P&G. R. Skinner Depo., p. 139, 392, 1254.

He also said that John Skinner did work at P&G hoisting steel, rigging and "moving things around." He did not recall disposal at the Landfill as a result of his brother's work at P&G. He physically was at a P&G facility as well, he said. R. Skinner Depo., p. 244-45, 247.

He added that P&G was the source of "fly ash" hauled to the Site through [REDACTED]. He said he saw the fly ash being loaded, estimating that there were 16-20 loads or more. He described the waste as a black powder or coal dust or fly ash, saying it was more grayish in color. He believed it had to have come from a furnace. He explained that his brother, John, was involved in the work that resulted in the collection of this material because John Skinner had a "drag line" at the P&G facility where the work occurred. R. Skinner Depo., p. 864, 867-872.

**P&G's Response to Site Witness Testimony.** P&G found no records of any shipments to the Site. It said that, insofar as it was aware, it never self-hauled waste. According to one affidavit provided to me by a 1970-present employee who worked in the Traffic Department, P&G did not put its name or corporate logo on any trucks used in the Cincinnati area. P&G dissected Ray Skinner's testimony into pieces and argued it did not comport with all of the other evidence in the record. It does not dispute that Ray Skinner and John Skinner may have worked at a P&G facility, but it had no contracts with them that it could find. It does not contest the [REDACTED] testimony, but otherwise believes that the evidence is too weak, too contradictory, or too inconsistent to be worth much, if anything. It also

explained that it donated distressed packaged material to "Second Harvest" for at least some of the time period that the Site was open.

The difficulty for P&G, as is the case for many other parties and as is the case frequently in Superfund landfill disputes, where the evidence is disputed, is that summary judgments cannot be won, and parties are forced to trials to resolve the disputes. In the Superfund context, such a system is inefficient and unfairly costly.

**Chem-Dyne.** Roger Ludwig testified that he and John Skinner disposed of a load of paper barrels in a pit dug at the Skinner landfill. He thought it was daytime and recalled it was muddy. R. Ludwig Depo., p. 145-146. He said that the barrels came from Procter & Gamble based on what John Skinner told him:

Q. Okay. Now, coming back to this particular then event, these paper barrels, a pit being dug, you got to use the Henderson or the Auto Car truck, you said. It's in the daytime. It's muddy. And go ahead and finish the story.

First of all, was it a full load. roughly 80 barrels that you had?

A. Yeah, that was a full load. That was the paper barrels. And they was also some cardboard boxes in that but mostly cardboard paper barrels, open top.

Q. Okay. Now, you said they were related to Procter & Gamble somehow?

A. Yeah.

Q. How do you know?

A. Because John said we might find a monkey, there's supposed to be a monkey in this from the lab. I said, you can find the monkey, I don't like monkeys.

Q. Well, how does that relate to Procter & Gamble?

A. For some reason, John knew they were from – that that load was from Procter & Gamble or that material was, and evidently, they was something about a monkey, a laboratory animal, and they was one in one of them containers.

Q. Okay. So you know because of what he said?

A. Yeah.

Q. There was no wording, no lettering, no labels that

otherwise indicated where --

A. That I --

Q. That you saw?

A. That I saw and remembered, no.

Q. Okay. All right. But he specifically said Procter & Gamble?

A. Right, on that particular load and the laboratory.

\*\*\*

Q. This came from Chemdyne or through Chemdyne?

A. Okay. It came through Chemdyne and the material, I was told by John, that it absolutely was P&G.

R. Ludwig Depo., p. 150-152, 153.

Mr. Ludwig then explained:

A. Well, it was really muddy and you backed up and it was over top -- the back of the trailer was quite a job to climb around the doors and get up in the trailer because our feet are muddy, you know, and it's over top of the end of the pit that he dug. We had quite a job.

Well, we -- we unloaded some of the material, dumping -- taking the lids off, pouring this material, which as I say, was around cat litter. It was little different bottles and things.

Q. Let me stop you right there. When you say cat litter, that's a powdery --

A. The clay, yeah.

Q. And it was mixed, in other words with bottles?

A. In other words, if this was a container (indicating) and they would put that down in the barrel, maybe they would put three or four inches of this material. It seemed like they was packing it very carefully.

R. Ludwig Depo., p. 152. There were, "All different kinds of bottles and flasks or whatever

they're called, different bottles and colors" that looked like laboratory materials that were sealed with caps. "None of this stuff was liquid or anything that was spilling out of these barrels. It was all carefully packed in these materials, in these barrels." R. Ludwig Depo., p. 153.

He explained that they were throwing "this stuff" into the pit that had been dug. The testimony then continued:

Q. You didn't care about keeping the paper barrels?

A. Yeah, that was the idea. We had to get the barrels down enough that we could dump them, and it wasn't easy to handle this kind of dry material.

Q. I see.

A. And Albert came up with a bulldozer. He was doing something, and John said, let's get this truck moved so it's easier to do this. We got down and moved the truck about three feet away from – out because it was stuck. We got back up in the truck and continued to dump these barrels out.

John said, we want to save these barrels, I know where I can sell them, or something or another. In other words, they were maybe more valuable than the metal barrels. And never did – I never did see no monkey. The monkey could have been in one of these pasteboard boxes in a plastic bag. Who knows?

Q. Or he could have just been pulling your leg?

A. No, I don't think so because I don't know why he would say there's a – there's an animal in here. But anyway, they was some boxes in this – these barrels, too. There was different type of bottles and canisters and boxes put in and then filled around with this material to keep them from shifting.

Q. Did you see what was in any of these boxes?

A. No, didn't open no cardboard boxes.

Q. All right.

A. And pretty well in the – maybe – anyway, I threw maybe a gallon jug of something in this hole and it exploded and caught on fire.

R. Ludwig Depo., p. 154-55. Mr. Ludwig explained that the "jugs" were glass containers

inside of the barrels. R. Ludwig Depo., p. 155. He added:

A. And some of this stuff was acid because you could see acid burn a material if you threw it on it. And whatever was in this stuff when I threw it in there, it literally exploded and plumes of black smoke and a lot of flame. And if that would have happened earlier, I don't think John and I could have got out of that trailer. So it was really quite an act of faith.

Albert came up with a bulldozer and we happened to have to move that thing, and John fired the rig up real quick and put the dirt or some of the material he removed from the hole on top of the fire and put it out. And we continued on dumping, getting the barrels emptied and, of course, filling up the hole.

Q. Okay. Did you ever see paper barrels like this in any other load?

A. No, that's the only load.

R. Ludwig Depo., p. 156.

P&G does not argue that Chem-Dyne collected laboratory waste. According to its questionnaire response, the four technical centers generated lab waste in barrels that Chem-Dyne collected in 1975-76. P&G records showed that the pick-ups by Chem-Dyne appeared to be monthly. It appears that the amount charged was \$900 per load, but the size of a "load" was not defined. Chem-Dyne was supposed to ship the waste to Robert Ross & Sons, Inc. in Grafton, Ohio, for incineration. P&G further said that the lab waste it generated consisted of "generally available commercial laboratory chemicals."

Without conceding a nexus, P&G also made the point that, assuming there were 70 drums and assuming they were 30 gallons in capacity, the material would represent 21,000 gallons or 10.3 cys, not all of which would be hazardous but which would represent a small fraction of the waste-in amount for the Site. (Position paper, p. 16).

P&G said that "in general Mr. Ludwig's testimony seemed credible" but said that there are evidentiary problems associated with the use of the testimony to establish that the load described by Mr. Ludwig came from P&G. Mr. Ludwig heard it from John Skinner and the source of John Skinner's knowledge is not known. (Position paper, p. 21)

P&G further explained that it never intended for its lab waste to reach the Site. It cited United States v. North Landing Line Construction Company, 1998 WL 230842 (E.D. Va. April 20, 1998), in support of an argument that it did not arrange for disposal of the waste if Chem-Dyne had the waste taken to the Site.

The North Landing decision involved an action by the United States against North Landing, a contractor hired by the United States Navy to upgrade the electrical system at a

base. North Landing removed transformers under the contract. A number of the transformers "were almost new and were in working condition to be reused as transformers, not scrap metal," North Landing's president testified. 1998 WL 230842 at \*3. North Landing sold them to a Mr. Roy Cohen for \$1 instructing him to dispose of the transformers as he saw fit. Mr. Cohen told North Landing he would resell the transformers to distribute electricity for the North Carolina Rural Electrification cooperatives. Instead, Cohen told William Sutton, the owner of the site at which cleanup money was spent, that he could remove the transformers and deliver them to the Sutton Site. North Landing did not know this, did not know Sutton, and did not know of the Sutton operation. North Landing had compiled detailed documentation on the transformers which it provided to Cohen and had no intent, the district court found, to dispose of the transformers illegally or in an unsafe manner when it released them to Cohen. The United States argued that, by allowing Cohen to remove the transformers for resale, North Landing had "arranged for disposal" of the transformers. Describing North Landing as an "innocent middleman" between the Navy and Cohen, the district court held that North Landing was not required "to investigate beyond Cohen's representation that the transformers would be resold for their intended use." 1998 WL 230842 at \*7. It concluded that North Landing was not liable under Section 107(a)(3), noting that the United States as the source of the transformers (and who also did not know about the fate of the transformers) had admitted already that it was liable as an arranger and would be paying 82% of the cleanup costs. On the assumption that P&G was the arranger for disposal of what indisputably was a waste, in my view, this case does not help P&G.

I do not disagree that on this record there are evidentiary issues. If this case does not settle, Mr. Ludwig's testimony will almost certainly be the subject of considerable discovery. It is quite conceivable that the connection to P&G will be proven to the satisfaction of the district court. Chem-Dyne may not have handled any other lab wastes. The testimony about how the lab wastes were packed may be identical to P&G's practices. The types of barrels used may be identical. And so on. It is not much of a stretch to believe that a sufficient nexus could be established, perhaps even without the need for inferences to be drawn.

Such a nexus will be expensive, however, to establish, for P&G, the United States, and any other plaintiff.

**Waste-in Amount.** After studying the testimony carefully again, and considering P&G's analysis, I have decided on the following:

1. I am assigning P&G 309 cys of solid MSW-type waste based on Mr. Ringel's testimony.
2. To account for the Lloyd Gregory, David Jividen, Elsa Skinner, and Ray Skinner testimony, I have decided to assign P&G 5 loads of waste at 20 cys per load. This figure more than embraces the testimony of the first three witnesses and represents what, on this record, I believe to be a fair balancing of Ray Skinner's testimony about his direct observations and P&G's attacks on Ray Skinner's testimony and the transaction costs that would otherwise be incurred to resolve the disputed evidence. For purposes of analysis, I regard

the P&G waste as MSW-type solid waste or construction or demolition debris.

3. With respect to the Ludwig testimony, I am assigning P&G 40 paper barrels of laboratory waste times 55 gallons. (I do not believe that Mr. Ludwig was referring to 30-gallon drums but to 55-gallon open head fiber drums). Of this amount, I have assumed that one-half of the drum was solid "kitty litter" packing material and one-half of the waste was a chemical laboratory waste. Based on Mr. Ludwig's descriptions of the containers in the barrels, I have assumed that one-half of the lab wastes were solid and one-half were liquid. Hence, I am assigning P&G an additional 5 cys of solid (kitty litter) wastes (one-half of 40 or 20 drums x 55 gallons divided by 202 gallons per cy) plus 3 cys of solid chemical lab wastes (one-fourth of 40 barrels, or 10 x 55 divided by 202) plus 550 gallons of liquid chemical laboratory wastes (one-fourth of 40, or 10 drums x 55 gallons divided by 202).

Hence, I am assigning P&G a waste-in amount of 417 cys, including 3 cys of chemical lab wastes in solid form and 550 gallons in liquid form.

#### Excerpt from Allocator's Final Report :

Procter & Gamble ("P&G") submitted its comments on November 9, 1998, and directed the Allocator's attention to his typographical error on page 47 of Appendix 2. P&G correctly points out that the figure in the second full paragraph on the page should be 2,100 gallons, not 21,000 gallons.

P&G noted its disagreement with assigning Mr. Ludwig's laboratory waste dumping incident to P&G. While it agreed that proving (or disproving) the liability may be expensive, it "wants the record to remain clear that it does not consider this evidence admissible in court and believes that to assign liability to P&G based on the double hearsay testimony of Mr. Ludwig is inappropriate." Rather than submit a brief on this issue, P&G said it would concentrate its energy on the settlement issues, which the Allocator appreciates. P&G also said that the Allocator's involvement may be necessary to reach a global settlement in this matter. I will devote as much energy to settlement as any person can. I simply ask all parties to come to the table to solve, not expand, the problems posed by the settlement of the Site.

Final Allocation Recommendations in Alphabetical Order, Skinner Landfill Superfund Site, April 12, 1999

Name Of Party	Solid Waste In Cys	Liquid Waste In Gallons	Solid Waste In Total Cys 372906	Percentage	Liquid Waste In Total Gallons 262252	Percentage	Solid Waste	Liquid Waste	Owner/ Operator & Part of Chem Dyne	Rest of Chem-Dyne	Total
PROCTER & GAMBLE CO	417	550	372906	0.1118%	262252	0.2097%	0.01%	0.04%			0.05313%

FROM THE DESK OF  
J. C. MCGREGOR

6/25/99

Ms Estes,

I would appreciate if you  
would replace my letter of June 21, 99  
to you regarding the Skinner Landfill  
with the enclosed. The text is the  
same but the Confidentiality notation  
was inadvertently omitted from the  
final copy.

Thank you,

Jane McGregor  
Procter + Humble  
513-983-6541

# Procter & Gamble

The Procter & Gamble Company  
Legal Division  
1 Procter & Gamble Plaza, Cincinnati, Ohio 45202-3315

Phone: (513) 983-6541  
Fax: (513) 983-7635

June McGregor  
Senior Counsel

June 21, 1999

Sherry Estes, Esq.  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region V  
77 West Jackson Boulevard (C-29A)  
Chicago, IL 60604

FOR SETTLEMENT PURPOSES ONLY  
PROTECTED FROM DISCLOSURE UNDER F.R.E. 408

Re: Skinner Landfill

Dear Ms. Estes:

As you may be aware, The Procter & Gamble Company ("P&G") entered into a de minimis settlement agreement earlier this year with the Plaintiffs in the Skinner Landfill private cost recovery action in the United States District Court for the Southern District of Ohio. In addition to providing for settlement of Plaintiffs' claims regarding their past costs as the Skinner Site, that agreement requires certain of the Plaintiffs to seek to negotiate a de minimis settlement between P&G and the United States (on behalf of the U.S. Environmental Protection Agency ("EPA")) that is at least as protective of the company's interests as are the terms of EPA's Model De Minimis Consent Decree set forth in the December 7, 1995 Federal Register.

It is P&G's understanding that EPA, Region V has now determined what information it will require in order to determine that P&G qualifies for a de minimis settlement at this Site. That information consists of: (i) the summary of each de minimis settlor's waste-in volume and percentage share of Site costs, as determined by the Allocator in the Final Allocation Report from the Skinner Alternative Dispute Resolution process, and (ii) the narrative description of the Allocator's findings for each de minimis settlor, as set forth in the Preliminary Allocation Report and, where the Allocator supplemented or altered those findings in the Final Allocation Report, the Final Allocation Report.

Accordingly, I am enclosing the information requested by EPA for P&G. As you will note, portions that are unrelated to the Skinner Landfill or confidential as per the case management order have been redacted. I believe that this information amply demonstrates that P&G is entitled to a de minimis settlement consistent with EPA's model de minimis settlement decree. P&G understands that EPA and Plaintiffs in the private cost recovery litigation will allocate among themselves the monies to be paid by P&G in settlement of the claims of Plaintiffs and the United States. By making this settlement offer, P&G does not acknowledge any liability for response costs at the Skinner Site.

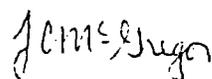
Sherry Estes, Esq.

June 21, 1999

Page 2

In order to ensure that P&G is able to avoid the incurrence of additional transaction costs in connection with the ongoing Skinner cost recovery litigation, P&G strongly urges EPA to finalize an appropriate de minimis settlement as expeditiously as possible. Such timely action would fulfill the statutory objectives of Section 122(g) of CERCLA and EPA's de minimis settlement policies, as well as provide needed funds for response actions at the Skinner Site.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "JCMcGregor".

Jane C. McGregor

# Procter & Gamble

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The Procter & Gamble Company  
Legal Division  
1 Procter & Gamble Plaza, Cincinnati, Ohio 45202-3315

Jane McGregor  
Senior Counsel

Phone: (513) 983-6541  
Fax: (513) 983-7635

June 21, 1999

Sherry Estes, Esq.  
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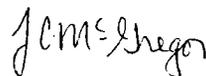
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Page 2

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Sincerely yours,

A handwritten signature in cursive script that reads "J.C. McGregor".

Jane C. McGregor

**Procter & Gamble**

Settlement Amount: \$44,991.66

**Excerpt from Allocator's Preliminary Report :**

P&G filed a response relating to a number of facilities.

**Advertising Services Building.** P&G reports that this facility was a warehouse for storage of P&G advertising and promotional materials during the Skinner Landfill time period. No manufacturing was conducted at this site. Roughly 200 people worked at this facility in 1966-1969.

Cafeteria waste was picked up by [REDACTED] from [REDACTED] at this location. According to [REDACTED] testimony, the trash was deposited at the Skinner Landfill beginning in 1962 or 1963 and continued until about 1968. P&G's response stated that it is unable to confirm or refute [REDACTED] testimony.

P&G said that this facility produced solid waste with no chemical constituents, and paper goods such as coupons, office trash and cafeteria waste. [REDACTED] said that he recalled going to the P&G Advertising Building on average two times per week and collecting from four 30 gallon garbage cans.

P&G further stated that in the 1978-90 time period, [REDACTED] collected waste from this facility.

**Technical Centers.** [REDACTED]

[REDACTED]

**Ivorydale Complex.** The Ivorydale Technical Center (ITC) was a laboratory and research facility for consumer products. It was accompanied at this location by three manufacturing plants. The Food Plant produced edible vegetable shortening and oils and formerly produced dry cake mix. The Soap Plant produced bar soap, liquid and powder detergents and industrial cleaning products. The St. Bernard Plant produced synthetic detergent products and formerly produced perfume.

P&G explained that generally finished products would only be disposed if they were off-specifications which meant that the formulation and/or the packaging was incorrect. P&G gave examples in its response (erroneously combining the wrong proportion of ingredients, combining products to the wrong consistency, i.e., too much or too little liquid or ingredient, packaging that did not include all of the copy that should be on the label, misspellings in a label, containers that were not filled to the proper level).

P&G explained that soap, fatty acid and fabric softener in drum quantity may have been generated from the Product Development area of the ITC. Based on nexus package information, P&G said that finished bar soap in dumpsters may have been generated by the Complex and taken to the Skinner Site in 55-gallon drums sometime in the 1940s and 1950s. P&G added that sometime in the late 1960s to mid-1970s, soap and fatty acid were allegedly seen in the dumpster at the Site.

P&G explained that waste soap was a solid consisting of tallow, paraffin, glycerine and perfumes. The finished product was manufactured by neutralizing a fatty acid to produce an organic soap. Several types of soap were manufactured during the relevant period. Production rates varied throughout time based on consumer usage. P&G had no information regarding the quantity of off-specification soap produced.

One particular soap manufactured in the 1940s and 1950s (and still manufactured today) is the Zest Deodorant Beauty Bar. Currently Zest is made of sodium tallowate, sodium cognate, sodium cocoglyceryl ether sulfonate, magnesium tallowate, water, sodium sulfate, magnesium cognate, sodium chloride, lauric acid or potassium, lauryl sulfate, fragrance, triclocarbon, sodium silicate, titanium dioxide, chromium, and hydroxide green. It may also contain zetasodium EDTA, potassium sulfate and/or potassium chloride. Zest is not "hazardous" within the meaning of the OSHA Hazard Communication Standard, P&G stated. It is moderately soluble in water.

Ivory Bar Soap is a soap from animal and vegetable fats to which a fragrance is added. P&G reports that it is not "hazardous" within the meaning of the OSHA Hazard Communication Standard. Ivory Soap was manufactured in the 1940s and 1950s and is still manufactured. P&G noted that soap containers were and are typically made of cardboard.

P&G further explained that fatty acid is an intermediate of soap. Fatty acid is a solid at ambient temperature. It is derived from animal or vegetable sources and is generated from the hydrolysis of fat. Fatty acid production related to the production needs for soap. P&G had no information regarding the monthly or annual amount of off-specification fatty acid generated.

Fabric softener is a liquid, composed of cationic fabric softening agents, perfume, bluing and quality control agents. It is a finished product. Off-specification fabric softener would not be a consistent waste stream. P&G had no information regarding the amounts of off-specification fabric softener generated.

Downy Fabric Softener was allegedly seen at the Site. P&G noted, according to nexus package information. Downy Fabric Softener currently is a liquid fabric softener that contains cationic fabric softening agents, perfume, bluing, and quality control agents. P&G said that it is not "hazardous" within the meaning of the OSHA Hazard Communication Standard. It is completely soluble in water.

Crisco oil is an edible, vegetable oil that is a finished product resulting from refining

vegetable oil. Off-specification Crisco would not be a consistent waste stream. P&G said, but it has no information regarding the generation or disposal of off-specification Crisco oil in the 1950s and 1960s.

P&G had records that ██████████ transported soap, Crisco, pre-mix and light duty liquid in 1985 - 1986. The ██████████ Landfill was usually noted as the destination. ██████████ invoices for Crisco were also located. They were sporadic but dated from 1974-1979. No destination was noted on the invoices, but personnel believe ██████████ used ██████████ landfill. (Other haulers noted in the summary below may have been used.)

Cinch, a household spray cleaner, is a liquid reportedly seen in a railroad car at the Site in the 1950s - 1960s. A formulation card for Cinch has been located from the late 1960s when the product was briefly marketed. It was a surface cleaner with the following composition: Butyl "Cellosolve" Solvent (polyethylene glycol), Butyl "Carbitol" Solvent (diethylene glycol n-butyl ether), TSP (trisodium phosphate), sodium LAS (Cationic  $SO_3$ ), Perfume, Phosphoric Acid, Water, Color Solution: Drimarine blue, D&C Yellow #10, Phenyl Mercuric Acetate, and water. It was a finished household cleaning product that came in plastic containers. Cinch was test marketed late in 1966 and then marketed nationally in 1967 for a few years. It was generated at the complex. If Cinch was disposed, it was probably by one of the haulers discussed generally below.

AGS (Alkyl Glyceryl Sulfonate, Sodium) paste is a semi-solid soap and laundry detergent. It is an intermediate product used at the Soap Plant in the manufacture of soap and laundry detergent. AGS paste was hauled by ██████████ in the early 1970s and is discussed in the ██████████ section. P&G had no information regarding the monthly or annual amount of waste generated or that may have been taken to the Site by ██████████

P&G also discussed Comet, a household cleaner. It is a powder made up of 80-90% silica sand, sodium dichloro-s-triazinetrione dihydrate, sodium sulfate, sodium carbonate, sodium alkyl benze sulfonate, colorant and perfume. The finished products are generated from blending the ingredients noted above. Off-specification Comet would not be a consistent waste stream. P&G had no information regarding the monthly amount of off-spec Comet generated. Transporters discussed below generally may have hauled off-spec products.

Prell is a shampoo composed of surfactants, water, fragrance and dye. It is a finished product. Off-specification Prell would not be a consistent waste stream. According to information in the nexus documents, Prell was seen on several skids during the mid-1970s time frame. P&G has no information regarding the amount off-specification shampoo generated. Transporters listed generally may have hauled off-spec products.

P&G noted the administrative deposition testimony of Roger Ludwig who recalled being told that he was handling at the Site laboratory wastes from P&G. Mr. Ludwig was referring to a shipment of 50 paper barrels transported from ██████████ to Skinner in the mid 1970s. P&G said that laboratory waste may have been generated by its technical centers (including the ones discussed below) but P&G had no information regarding the constituents included under the definition of "lab waste" by Mr. Ludwig. P&G personnel

described lab waste as potentially consisting of any discarded commercially available chemical. Additionally, glassware, plastic pipettes and associated paper waste would be considered lab waste. Due to the very nature of research, lab waste varies in quantity and composition, depending on what research is being conducted. P&G added.

[REDACTED]

[REDACTED]

[REDACTED]

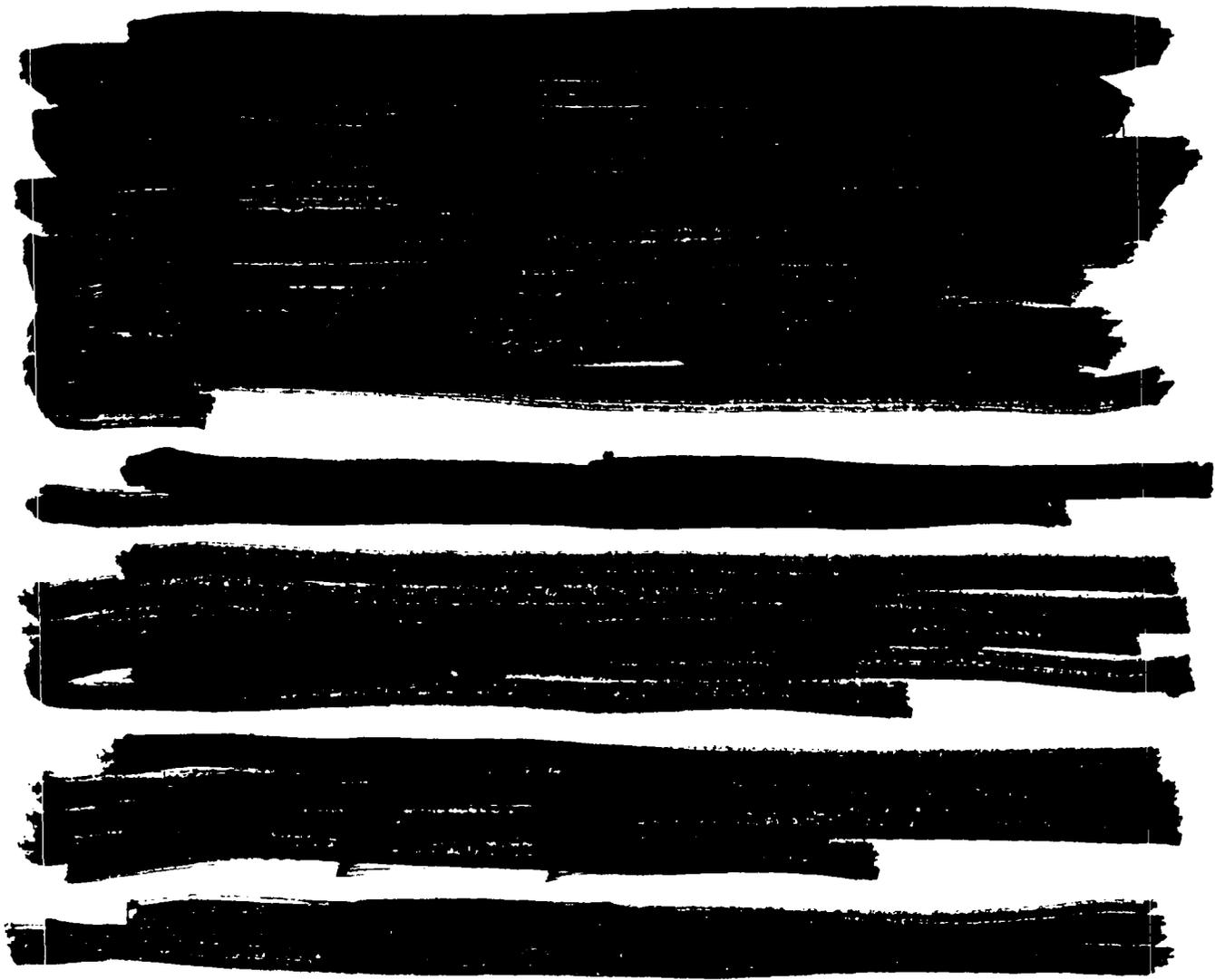
Winton Hill Technical Center was open from 1959 - 1990. It housed offices and research and development facilities where employees focused on research for consumer products including paper, food and beverage, and soap. It produced the same type of laboratory waste described above

Winton Hill used [REDACTED] to transport construction debris from office space renovation. [REDACTED] was used to haul solid waste, office trash and cafeteria waste from 1975-1978. P&G reported that it did not appear that [REDACTED] provided service every month in the 1975-1978 time frame.

[REDACTED] was used once in 1984 and 1988 and more often in 1985-86. P&G is in possession of the following invoices: one for \$540 in 1984; one for \$159 in 1988; and invoices for 1985 and 1986. Personnel stated that these invoices were for the rental of a compactor and associated hauling charges (\$90 per trip). The waste was from a Paper Products building apparently, and consisted of paper. In the Paper Products building, large

rolls (4 ft. x 2 ft. x 4 ft.) of paper are converted to smaller rolls resulting in paper towels, tissues, and other paper products which are then used as test products. The scrap paper from this process would be put in the compactor. The other invoices for Winton Hill listed Building 501 as the service location with \$45 for hauling and dumping charges and a monthly rental fee of \$90 for open top containers. The invoices are limited to a three month period in 1986. P&G personnel stated that there was not, and is not, a Building 501 so P&G is unable to identify where this pickup was actually made.

**Miami Valley Labs.** Miami Valley Labs was operated by P&G from 1952 through 1990. It housed researchers conducting consumer product research on food and beverage products, laundry products, paper products, and health care products. Laboratory waste, as described above, was also produced. Pick-ups from ██████████ were thought to be for solid waste, i.e. office trash and cafeteria waste. P&G is in possession of invoices reflecting P&G's use of ██████████ one time for \$5.00 in 1979; two times for \$14.00 in 1978; and a more consistent usage in 1985-1987. The unit price charged by ██████████ was between \$30.00 and \$52.50 and the total per month was about \$200 - \$400.



[REDACTED]

[REDACTED]

[REDACTED]

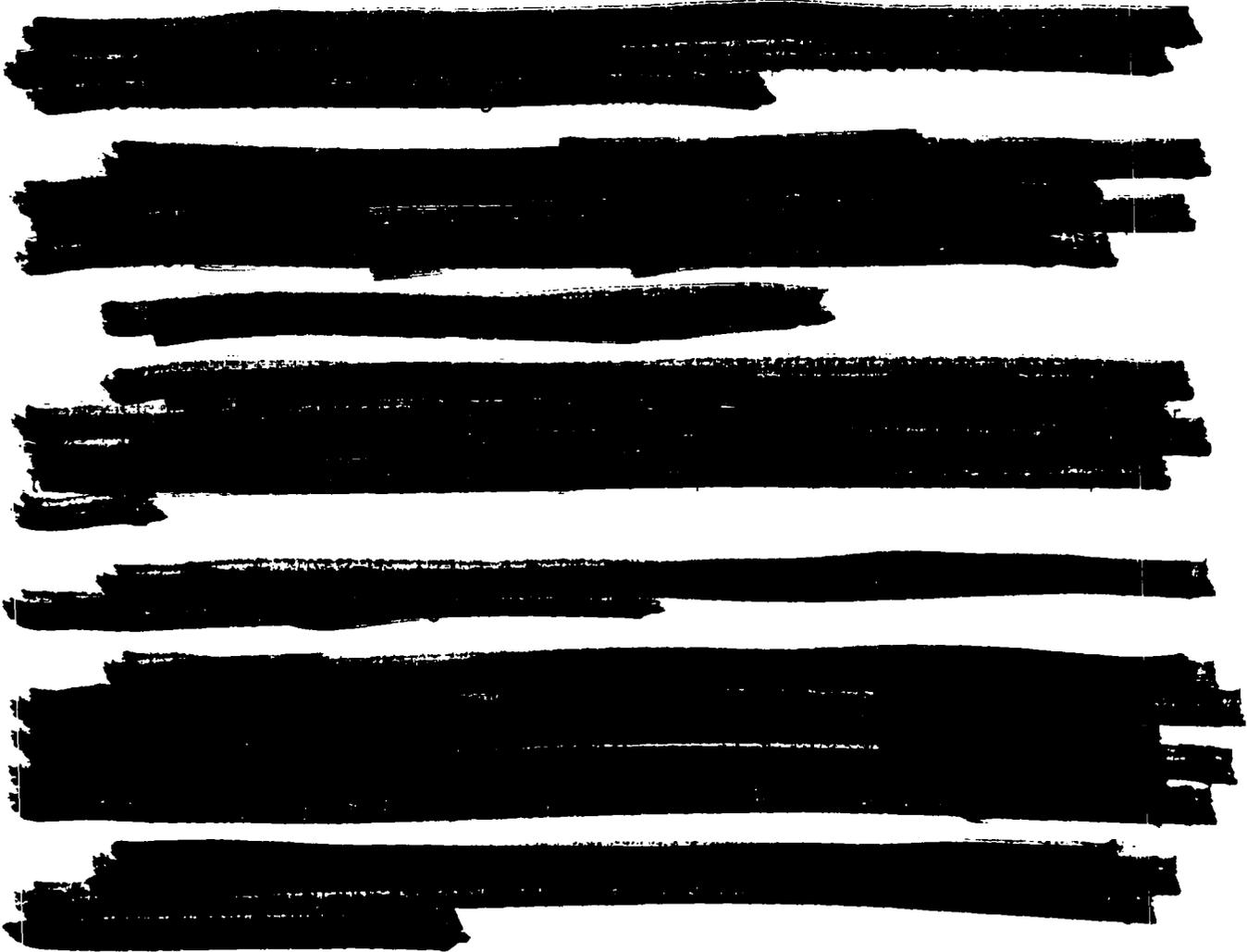
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



**Miscellaneous Transporters.** P&G located nine invoices for [REDACTED] from 1987-1990 for residential houses. Each invoice shows a total hauling and disposing charge ranging from \$130 - \$175.

P&G also located eight invoices for [REDACTED]. One showed a credit to the General Offices for a 6" channel for \$253 on June 28, 1985; two appeared to be for the Advertising Services Bldg. for purchase of paper for \$171.15 and \$122.10 in October 1987; and five were for angle iron and rebar totaling \$283.92 between May - August 1988. These invoices do not appear to involve waste hauling, P&G wrote.

P&G also located two invoices for Bill Young & Co., Inc. that showed that the Winton Hill Technical Center purchased three Thompson Electric pumps; one in April 1985 and two in January 1985.

P&G also located nine invoices for Maxwell Co. Seven appear to be for the purchase of sodium metasilicate in August 1981, for \$2,099.48; one for purchase of sulfuric acid in November 1981 for \$195 and one for purchase of ethylene glycol in November 1987 for

\$318.00.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Site Witnesses.** [REDACTED] testimony was discussed above. I deal with Roger Ludwig's testimony separately below when I discuss [REDACTED]

Maria Roy recalled the disposal of Cinch, the household cleaner, which she linked to Procter & Gamble. She said that there were railroad cars filled with Cinch at the Site but that she did not know if any Cinch was disposed of in the Landfill. She also suggested that her father did work for P&G that resulted in the disposal of construction debris based on hearing conversations between her mother and father in the late 1950s or 1960s, as I read her testimony. M. Roy Depo., p. 291 - 294.

Elsa Skinner testified that Procter & Gamble used the Site for the disposal of "contaminated lard and whatever they manufacture." She appeared to be saying that the waste was hauled in by someone else but paid for by P&G. It was a customer for only a short time, and she did not know the number of times waste came in or when P&G used the Site. E. Skinner Depo., p. 440-441.

Lloyd Gregory described the disposal of one or two loads of soap and Comet cleaner in barrels. He said it came in a 20-30 cy dumpster. This occurred in the late 1980s. L. Gregory Depo., p. 166-67. David Jividen recalled the disposal of sample boxes of Tide and soap boxes in a one time event consisting of about 40 cys. D. Jividen Depo., p. 72-75.

Rodney Miller was not sure if P&G used the Site, but said that if there was a link, it would be through [REDACTED]. Mr. Miller recalled that John Skinner moved heavy machinery for P&G, apparently through [REDACTED]. R. Miller Depo., p. 55, 180-181.

Ray Skinner said that P&G hauled in shampoos, dishwashing detergent, Downy fabric softener in drums, soaps, and powders. He said that P&G used a van truck to dispose of waste. It had a capacity of 40-50 cys, he said. He saw the name Procter & Gamble on the side of the truck. He was confident that P&G was the source of 300-400 loads over the years. He personally saw 20-30 loads, he said. He placed P&G's use of the Site as covering a period that spanned the 1950s until John Skinner died in 1982. R. Skinner Depo., p. 243-49, 1188, 1253.

He also said that [REDACTED] hauled demolition waste for P&G. R. Skinner Depo., p. 139, 392, 1254.

He also said that John Skinner did work at P&G hoisting steel, rigging and "moving things around." He did not recall disposal at the Landfill as a result of his brother's work at P&G. He physically was at a P&G facility as well, he said. R. Skinner Depo., p. 244-45, 247.

He added that P&G was the source of "fly ash" hauled to the Site through [REDACTED]. He said he saw the fly ash being loaded, estimating that there were 16-20 loads or more. He described the waste as a black powder or coal dust or fly ash, saying it was more grayish in color. He believed it had to have come from a furnace. He explained that his brother, John, was involved in the work that resulted in the collection of this material because John Skinner had a "drag line" at the P&G facility where the work occurred. R. Skinner Depo., p. 864, 867-872.

**P&G's Response to Site Witness Testimony.** P&G found no records of any shipments to the Site. It said that, insofar as it was aware, it never self-hauled waste. According to one affidavit provided to me by a 1970-present employee who worked in the Traffic Department, P&G did not put its name or corporate logo on any trucks used in the Cincinnati area. P&G dissected Ray Skinner's testimony into pieces and argued it did not comport with all of the other evidence in the record. It does not dispute that Ray Skinner and John Skinner may have worked at a P&G facility, but it had no contracts with them that it could find. It does not contest the [REDACTED] testimony, but otherwise believes that the evidence is too weak, too contradictory, or too inconsistent to be worth much, if anything. It also

explained that it donated distressed packaged material to "Second Harvest" for at least some of the time period that the Site was open.

The difficulty for P&G, as is the case for many other parties and as is the case frequently in Superfund landfill disputes, where the evidence is disputed, is that summary judgments cannot be won, and parties are forced to trials to resolve the disputes. In the Superfund context, such a system is inefficient and unfairly costly.

██████████ Roger Ludwig testified that he and John Skinner disposed of a load of paper barrels in a pit dug at the Skinner landfill. He thought it was daytime and recalled it was muddy. R. Ludwig Depo., p. 145-146. He said that the barrels came from Procter & Gamble based on what John Skinner told him:

Q. Okay. Now, coming back to this particular then event, these paper barrels, a pit being dug, you got to use the Henderson or the Auto Car truck, you said. It's in the daytime. It's muddy. And go ahead and finish the story.

First of all, was it a full load, roughly 80 barrels that you had?

A. Yeah, that was a full load. That was the paper barrels. And they was also some cardboard boxes in that but mostly cardboard paper barrels, open top.

Q. Okay. Now, you said they were related to Procter & Gamble somehow?

A. Yeah.

Q. How do you know?

A. Because John said we might find a monkey, there's supposed to be a monkey in this from the lab. I said, you can find the monkey, I don't like monkeys.

Q. Well, how does that relate to Procter & Gamble?

A. For some reason, John knew they were from – that that load was from Procter & Gamble or that material was, and evidently, they was something about a monkey, a laboratory animal, and they was one in one of them containers.

Q. Okay. So you know because of what he said?

A. Yeah.

Q. There was no wording, no lettering, no labels that

otherwise indicated where --

A. That I --

Q. That you saw?

A. That I saw and remembered, no.

Q. Okay. All right. But he specifically said Procter & Gamble?

A. Right, on that particular load and the laboratory.

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Q. This came from [REDACTED]?

A. Okay. It came through [REDACTED] and the material, I was told by John, that it absolutely was P&G.

R. Ludwig Depo., p. 150-152, 153.

Mr. Ludwig then explained:

A. Well, it was really muddy and you backed up and it was over top -- the back of the trailer was quite a job to climb around the doors and get up in the trailer because our feet are muddy, you know, and it's over top of the end of the pit that he dug. We had quite a job.

Well, we -- we unloaded some of the material, dumping -- taking the lids off, pouring this material, which as I say, was around cat litter. It was little different bottles and things.

Q. Let me stop you right there. When you say cat litter, that's a powdery --

A. The clay, yeah.

Q. And it was mixed, in other words with bottles?

A. In other words, if this was a container (indicating) and they would put that down in the barrel, maybe they would put three or four inches of this material. It seemed like they was packing it very carefully.

R. Ludwig Depo., p. 152. There were, "All different kinds of bottles and flasks or whatever

they're called, different bottles and colors" that looked like laboratory materials that were sealed with caps. "None of this stuff was liquid or anything that was spilling out of these barrels. It was all carefully packed in these materials, in these barrels." R. Ludwig Depo., p. 153.

He explained that they were throwing "this stuff" into the pit that had been dug. The testimony then continued:

Q. You didn't care about keeping the paper barrels?

A. Yeah, that was the idea. We had to get the barrels down enough that we could dump them, and it wasn't easy to handle this kind of dry material.

Q. I see.

A. And Albert came up with a bulldozer. He was doing something, and John said, let's get this truck moved so it's easier to do this. We got down and moved the truck about three feet away from – out because it was stuck. We got back up in the truck and continued to dump these barrels out.

John said, we want to save these barrels, I know where I can sell them, or something or another. In other words, they were maybe more valuable than the metal barrels. And never did – I never did see no monkey. The monkey could have been in one of these pasteboard boxes in a plastic bag. Who knows?

Q. Or he could have just been pulling your leg?

A. No, I don't think so because I don't know why he would say there's a – there's an animal in here. But anyway, they was some boxes in this – these barrels, too. There was different type of bottles and canisters and boxes put in and then filled around with this material to keep them from shifting.

Q. Did you see what was in any of these boxes?

A. No, didn't open no cardboard boxes.

Q. All right.

A. And pretty well in the – maybe – anyway, I threw maybe a gallon jug of something in this hole and it exploded and caught on fire.

R. Ludwig Depo., p. 154-55. Mr. Ludwig explained that the "jugs" were glass containers

inside of the barrels. R. Ludwig Depo., p. 155. He added:

A. And some of this stuff was acid because you could see acid burn a material if you threw it on it. And whatever was in this stuff when I threw it in there, it literally exploded and plumes of black smoke and a lot of flame. And if that would have happened earlier, I don't think John and I could have got out of that trailer. So it was really quite an act of faith.

Albert came up with a bulldozer and we happened to have to move that thing, and John fired the rig up real quick and put the dirt or some of the material he removed from the hole on top of the fire and put it out. And we continued on dumping, getting the barrels emptied and, of course, filling up the hole.

Q. Okay. Did you ever see paper barrels like this in any other load?

A. No, that's the only load.

R. Ludwig Depo., p. 156.

P&G does not argue that ██████████ collected laboratory waste. According to its questionnaire response, the four technical centers generated lab waste in barrels that ██████████ collected in 1975-76. P&G records showed that the pick-ups by ██████████ appeared to be monthly. It appears that the amount charged was \$900 per load, but the size of a "load" was not defined. ██████████ was supposed to ship the waste to Robert Ross & Sons, Inc. in Grafton, Ohio, for incineration. P&G further said that the lab waste it generated consisted of "generally available commercial laboratory chemicals."

Without conceding a nexus, P&G also made the point that, assuming there were 70 drums and assuming they were 30 gallons in capacity, the material would represent 21,000 gallons or 10.3 cys, not all of which would be hazardous but which would represent a small fraction of the waste-in amount for the Site. (Position paper, p. 16).

P&G said that "in general Mr. Ludwig's testimony seemed credible" but said that there are evidentiary problems associated with the use of the testimony to establish that the load described by Mr. Ludwig came from P&G. Mr. Ludwig heard it from John Skinner and the source of John Skinner's knowledge is not known. (Position paper, p. 21)

P&G further explained that it never intended for its lab waste to reach the Site. It cited United States v. North Landing Line Construction Company, 1998 WL 230842 (E.D. Va. April 20, 1998), in support of an argument that it did not arrange for disposal of the waste if ██████████ had the waste taken to the Site.

The North Landing decision involved an action by the United States against North Landing, a contractor hired by the United States Navy to upgrade the electrical system at a

base. North Landing removed transformers under the contract. A number of the transformers "were almost new and were in working condition to be reused as transformers, not scrap metal," North Landing's president testified. 1998 WL 230842 at \*3. North Landing sold them to a Mr. Roy Cohen for \$1 instructing him to dispose of the transformers as he saw fit. Mr. Cohen told North Landing he would resell the transformers to distribute electricity for the North Carolina Rural Electrification cooperatives. Instead, Cohen told William Sutton, the owner of the site at which cleanup money was spent, that he could remove the transformers and deliver them to the Sutton Site. North Landing did not know this, did not know Sutton, and did not know of the Sutton operation. North Landing had compiled detailed documentation on the transformers which it provided to Cohen and had no intent, the district court found, to dispose of the transformers illegally or in an unsafe manner when it released them to Cohen. The United States argued that, by allowing Cohen to remove the transformers for resale, North Landing had "arranged for disposal" of the transformers. Describing North Landing as an "innocent middleman" between the Navy and Cohen, the district court held that North Landing was not required "to investigate beyond Cohen's representation that the transformers would be resold for their intended use." 1998 WL 230842 at \*7. It concluded that North Landing was not liable under Section 107(a)(3), noting that the United States as the source of the transformers (and who also did not know about the fate of the transformers) had admitted already that it was liable as an arranger and would be paying 82% of the cleanup costs. On the assumption that P&G was the arranger for disposal of what indisputably was a waste, in my view, this case does not help P&G.

I do not disagree that on this record there are evidentiary issues. If this case does not settle, Mr. Ludwig's testimony will almost certainly be the subject of considerable discovery. It is quite conceivable that the connection to P&G will be proven to the satisfaction of the district court. [REDACTED] may not have handled any other lab wastes. The testimony about how the lab wastes were packed may be identical to P&G's practices. The types of barrels used may be identical. And so on. It is not much of a stretch to believe that a sufficient nexus could be established, perhaps even without the need for inferences to be drawn.

Such a nexus will be expensive, however, to establish, for P&G, the United States, and any other plaintiff.

**Waste-in Amount.** After studying the testimony carefully again, and considering P&G's analysis, I have decided on the following:

1. I am assigning P&G 309 cys of solid MSW-type waste based on Mr. Ringel's testimony.
2. To account for the Lloyd Gregory, David Jividen, Elsa Skinner, and Ray Skinner testimony, I have decided to assign P&G 5 loads of waste at 20 cys per load. This figure more than embraces the testimony of the first three witnesses and represents what, on this record, I believe to be a fair balancing of Ray Skinner's testimony about his direct observations and P&G's attacks on Ray Skinner's testimony and the transaction costs that would otherwise be incurred to resolve the disputed evidence. For purposes of analysis, I regard

the P&G waste as MSW-type solid waste or construction or demolition debris.

3. With respect to the Ludwig testimony, I am assigning P&G 40 paper barrels of laboratory waste times 55 gallons. (I do not believe that Mr. Ludwig was referring to 30-gallon drums but to 55-gallon open head fiber drums). Of this amount, I have assumed that one-half of the drum was solid "kitty litter" packing material and one-half of the waste was a chemical laboratory waste. Based on Mr. Ludwig's descriptions of the containers in the barrels, I have assumed that one-half of the lab wastes were solid and one-half were liquid. Hence, I am assigning P&G an additional 5 cys of solid (kitty litter) wastes (one-half of 40 or 20 drums x 55 gallons divided by 202 gallons per cy) plus 3 cys of solid chemical lab wastes (one-fourth of 40 barrels, or 10 x 55 divided by 202) plus 550 gallons of liquid chemical laboratory wastes (one-fourth of 40, or 10 drums x 55 gallons divided by 202).

Hence, I am assigning P&G a waste-in amount of 417 cys, including 3 cys of chemical lab wastes in solid form and 550 gallons in liquid form.

Excerpt from Allocator's Final Report :

Procter & Gamble ("P&G") submitted its comments on November 9, 1998, and directed the Allocator's attention to his typographical error on page 47 of Appendix 2. P&G correctly points out that the figure in the second full paragraph on the page should be 2,100 gallons, not 21,000 gallons.

P&G noted its disagreement with assigning Mr. Ludwig's laboratory waste dumping incident to P&G. While it agreed that proving (or disproving) the liability may be expensive, it "wants the record to remain clear that it does not consider this evidence admissible in court and believes that to assign liability to P&G based on the double hearsay testimony of Mr. Ludwig is inappropriate." Rather than submit a brief on this issue, P&G said it would concentrate its energy on the settlement issues, which the Allocator appreciates. P&G also said that the Allocator's involvement may be necessary to reach a global settlement in this matter. I will devote as much energy to settlement as any person can. I simply ask all parties to come to the table to solve, not expand, the problems posed by the settlement of the Site.

Final Allocation Recommendations in Alphabetical Order, Skinner Landfill Superfund Site, April 12, 1999

Name Of Party	Solid Waste In Cys	Liquid Waste In Gallons	Solid Waste In Total Cys	Percentage	Liquid Waste In Total Gallons	Percentage	Solid Waste	Liquid Waste	Owner/ Operator & Part of Chem-fyne	Rest of Chem-Dyne	Total
PROCTER & GAMBLE CO	417	550	372906	0.1118%	262252	0.2097%	0.01%	0.04%			0.05313%